

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

J. NAITH MASSINGILL	§	
VS.	§	CIVIL ACTION NO. 1:05-CV-785
BRAD LIVINGSTON	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff J. Naith Massingill, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division ("TDCJ-CID"), proceeding *pro se* and *in forma pauperis*, brought this civil action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc, against defendant Brad Livingston, the Director of TDCJ-CID.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting the defendant's motion for summary judgment and dismissing the case with prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). The magistrate judge correctly concluded that plaintiff

is barred from recovering compensatory damages for emotional injuries because he did not suffer any physical injuries. 42 U.S.C. § 1997e(e); *see Geiger v. Jowers*; 404 F.3d 371, 375 (5th Cir. 2005) (holding that Section 1997e(e) applies to all civil actions in which the plaintiff alleges a constitutional violation); *Siglar v. Hightower*, 112 F.3d 191, 193-94 (5th Cir. 1997) (holding that plaintiff cannot recover compensatory damages unless he suffered more than a *de minimis* physical injury). Plaintiff erroneously contends that the magistrate judge found he was barred from all forms of relief, including punitive and nominal damages, and injunctive relief. This objection is without merit because plaintiff has misconstrued the magistrate judge's recommendation.

Plaintiff also objects to the magistrate judge's recommendations concerning the merits of his claims, and contends that the case should not be dismissed without an evidentiary hearing. After careful consideration, the court agrees with the magistrate judge's conclusion that summary judgment is appropriate. An evidentiary hearing was not necessary because there were no genuine issues of material fact. Therefore, plaintiff's objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. Defendant's motion for summary judgment is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **31** day of **August, 2006**.



Ron Clark, United States District Judge